

1 **R277. Education, Administration.**

2 **R277-201. Utah Professional Practices Advisory Commission (UPPAC), Rules**
3 **of Procedure: Notification to Educators, Complaints and Final Disciplinary**
4 **Actions.**

5 **R277-201-1. Authority and Purpose.**

6 [A-](1) This rule is authorized ~~[under]~~by:

7 (a) Utah Constitution Article X, Section 3₁ which vests general control and
8 supervision over public education in the Board[-];

9 (b) ~~[by]~~Section 53A-6-306₁ which directs the Board to adopt rules regarding
10 UPPAC duties and procedures[-]; and

11 (c) ~~[by]~~Subsection 53A-1-401(3)₁ which allows the Board to adopt rules in
12 accordance with its responsibilities.

13 [B-](2) The purpose of this rule is to provide procedures regarding:

14 ([1]a) notifications of alleged educator misconduct;

15 ([2]b) review of notifications by UPPAC; and

16 ([3]c) complaints, stipulated agreement₁ and defaults.

17 [C-](3) Except as provided in Subsection ~~[R277-201-1D](4)~~, ~~[the provisions of~~
18 ~~the]~~Title 63G, Chapter 4, ~~[Utah]~~Administrative Procedures Act does not apply to this
19 rule under the exemption of Subsection 63G-4-102(2)(d).

20 [D-](4) UPPAC may invoke and use sections or provisions of~~[the Utah~~
21 ~~Administrative Procedures Act as found in]~~ Title 63G, Chapter 4, ~~[Utah]~~
22 Administrative Procedures Act[-] as necessary to adjudicate an issue.

23 **R277-201-2. Initiating Proceedings Against Educators.**

24 [A-](1) The Executive Secretary may refer a case to UPPAC to make a
25 determination if an investigation should be opened regarding an educator:

26 ([1]a) upon receiving a notification of alleged educator misconduct; or

27 ([2]b) upon the Executive Secretary's own initiative.

28 [B-](2) An informant shall submit an allegation to the Executive Secretary in
29 writing, including the following:

30 ([1]a) the informant's:

31 ([a]i) name;

(b)ii position, [(such as administrator, teacher, parent, or student)];
(c)iii) telephone number;
(d)iv) address; and
(e)v) contact information;
(2)b) ~~[the following]~~ information of the educator against whom the allegation is made:

(a)i) name;
(b)ii) position, [(such as administrator, teacher, candidate)]; and
(c)iii) if known, the address and telephone number ~~[of the educator against whom the allegation is made]~~;
(d)c) the facts on which the allegation is based and supporting information;
and

(e)d) signature of the informant and date.
[C-](3) If an informant submits a written allegation of misconduct as provided in this rule, the informant may be notified of a final action taken by the Board regarding the allegation.

[D-](1)4(a) Proceedings initiated upon the Executive Secretary's own initiative may be based on information received through a telephone call, letter, newspaper article, media information, notice from another state, or by other means.

(2)b) The Executive Secretary may also recommend an investigation based on an anonymous allegation, notwithstanding the provisions of this rule, if the allegation bears sufficient indicia of reliability.

[E-](5) All written allegations, subsequent dismissals, actions, or disciplinary letters related to a case against an educator shall be maintained permanently in the UPPAC ~~[s paper licensing]~~ case file[s].

R277-201-3. Review of Notification of Alleged Educator Misconduct.

~~[A-](1)(a) [Initial Review:]~~ On reviewing the notification of alleged educator misconduct, the Executive Secretary, the Executive Committee, or both, shall recommend one of the following to UPPAC:

(1)i) ~~[D]~~ dismiss ~~[the matter]~~ if UPPAC determines that alleged misconduct does not involve an issue that UPPAC should address, ~~UPPAC shall dismiss the~~

63 matter]; or

64 ([2]ii) [f]initiate an investigation[;—f] if UPPAC determines that the alleged

65 misconduct involves an issue [which]that may be appropriately addressed by

66 UPPAC and the Board[;].

67 ([a]b) If the Executive Secretary or Executive Committee recommends

68 UPPAC initiate an investigation:

69 (i) UPPAC shall initiate an investigation; and

70 ([b]ii) the Executive Secretary shall direct a UPPAC investigator to gather

71 evidence relating to the allegations.

72 [B]([1]2)(a) Prior to a UPPAC investigator's initiation of an investigation, the

73 Executive Secretary shall send a letter to the following with information that UPPAC

74 has initiated an investigation[~~has been initiated~~]:

75 ([a]i) the educator to be investigated;

76 ([b]ii) the LEA that[~~currently~~] employs the educator; and

77 ([c]iii) the LEA where the alleged activity occurred.

78 ([2]b) A letter described in Subsection [R277-201-3B(1)](2)(a) shall inform the

79 educator and the LEA[~~(s)~~] that an investigation shall take place and is not evidence

80 of unprofessional conduct.

81 ([3]c) UPPAC shall place a flag on the educator's CACTUS file after sending

82 the notices as provided in this rule.

83 [C]([1]3)(a) The investigator shall review relevant documentation and interview

84 individuals who may have knowledge of the allegations.

85 ([2]b) The investigator shall prepare an investigative report of the findings of

86 the investigation and a recommendation for appropriate action or disciplinary letter.

87 ([3]c) If the investigator discovers additional evidence of unprofessional

88 conduct [which]that could have been included in the original notification of alleged

89 educator misconduct, the investigator may include the additional evidence of

90 misconduct in the investigative report.

91 ([4]d) The investigator shall submit the investigative report[~~shall be submitted~~]

92 to the Executive Secretary.

93 ([5]e) The Executive Secretary shall review the investigative report described

94 in Subsection [R277-201-3C(4)](3)(d) with UPPAC.

([6]f) The investigative report described in Subsection [R277-201-3G(4)](3)(d) shall become part of the UPPAC [E]case [F]file.

[D-](4) ~~[Secondary Review:]~~UPPAC shall review the investigative report and take one of the following actions:

([1]a) ~~[Dismiss: If-]~~UPPAC determines no further action should be taken, [it]UPPAC may recommend that the Board dismiss the case; or

([2]b) UPPAC may [M]make an initial recommendation of appropriate [A]action or disciplinary letter.

[E-](5) After receiving an initial recommendation from UPPAC for action, the Executive Secretary shall direct a UPPAC prosecutor to:

([1]a) prepare and serve a complaint; or

([2]b) negotiate and prepare a stipulated agreement.

[F]([1]6)(a) A stipulated agreement shall conform to the requirements set forth in Section R277-201-6.

([2]b) An educator may stipulate to any recommended disposition for an action.

[G-](7) The Executive Secretary shall forward any stipulated agreement to the Board for approval.

~~[H. Upon receipt of a hearing report as defined in R277-202, UPPAC shall make a final recommendation with appropriate findings and shall direct the Executive Secretary to transmit the recommendation to the Board for consideration.]~~

R277-201-4. Expedited Hearings.

[A-](1) In a case involving the report of an arrest, citation, or charge of a licensed educator, which requires self-reporting by the educator under Section R277-516-3, the Executive Secretary, with the consent of the educator, may schedule the matter for an expedited hearing in lieu of initially referring the matter to UPPAC.

[B]([1]2)(a) The Executive Secretary shall hold an expedited hearing~~[shall be held]~~ within ~~[thirty-]~~[30()] days of a report of an arrest, citation, or charge, unless otherwise agreed upon by both parties.

([2]b) The Executive Secretary or the Executive Secretary's designee shall

126 conduct ~~[A]an expedited hearing[will be conducted by the Executive Secretary or the~~
127 ~~Executive Secretary's designee]~~ with the following additional invited participants:

128 ([a]i) the educator;

129 ([2]ii) the educator's attorney or representative;

130 ([3]iii) a UPPAC prosecutor;

131 ([4]iv) a voting member of UPPAC; and

132 ([5]v) a representative~~[(s)]~~ of the educator's LEA.

133 ~~[G.](3) The panel may consider the~~ following matters~~[- may be considered]~~ at
134 an expedited hearing:

135 ([4]a) an educator's oral or written explanation of the events;

136 ([2]b) a police report;

137 ([3]c) a court docket or transcript;

138 ([4]d) an LEA's investigative report or employment file; and

139 ([5]e) additional information offered by the educator if the panel deems it
140 probative of the issues at the ~~[E]~~expedited ~~[H]~~hearing.

141 ~~[D.](4)~~ After reviewing the evidence, the expedited hearing panel shall make
142 written findings and a recommendation to UPPAC to do one of the following:

143 ([4]a) close the case;

144 ([2]b) close the case upon completion of court requirements;

145 ([3]c) recommend issuance of a disciplinary letter to the Board;

146 ([4]d) open a full investigation; or

147 ([5]e) recommend action by the Board, subject to an educator's due process
148 rights under these rules.

149 ~~[E.](5)~~ An expedited hearing may be recorded, but the testimony from the
150 expedited hearing is inadmissible during a future UPPAC action related to the
151 allegation.

152 ~~[F.](6)~~ If the Board fails to adopt the recommendation of an expedited hearing
153 panel, UPPAC shall open a full investigation.

154 **R277-201-5. Complaints.**

155 ~~[A.](1) [Filing a complaint.]~~If UPPAC determines that an allegation is
156 sufficiently supported by evidence discovered in the investigation, UPPAC, through

the Executive Secretary, may direct the prosecutor to serve a complaint upon the educator being investigated.

~~[B-](2) [Elements of a complaint:]~~At a minimum, a complaint shall include:

(~~[1]~~1)a) a statement of legal authority and jurisdiction under which the action is being taken;

(~~[2]~~2)b) a statement of the facts and allegations upon which the complaint is based;

(~~[3]~~3)c) other information ~~[which]~~that the investigator believes ~~[to be]~~is necessary to enable the respondent to understand and address the allegations;

(~~[4]~~4)d) a statement of the potential consequences ~~[should]~~if an allegation ~~[be]~~is found to be true or substantially true;

(~~[5]~~5)e) a statement that the respondent shall answer the complaint and request a hearing, if desired, within 30 days of the date the complaint ~~[was]~~is mailed to the respondent;

(~~[6]~~6)f) a statement that the respondent is required to file a written answer described in Subsection [R277-201-5B(5)](2)(e) with the Executive Secretary;

(~~[7]~~7)g) a statement advising the respondent that if the respondent fails to respond within 30 days, a default judgment for revocation or a suspension of the educator's license may occur for a term of five years or more;

(~~[8]~~8)h) a statement that, if a hearing is requested, the hearing ~~[shall]~~will be scheduled no less than 25 days, nor more than 180 days, after receipt of the respondent's answer, unless a different date is agreed to by both parties in writing; and

(~~[9]~~9)i) a statement that the hearing ~~[will be]~~is governed by these rules, with an internet address where the rules may be accessed.

~~[C-](3)~~ On the Executive Secretary's own motion, the Executive Secretary, or the Executive Secretary's designee, with notice to the parties, may reschedule a hearing date.

~~[D-](14)(a) [Answer to the complaint:]~~A respondent may file an answer to a complaint by filing a written response signed by the respondent[, or the respondent's representative with the Executive Secretary within 30 days after the complaint ~~[was]~~is mailed.

189 ([2]b) The answer may include a request for a hearing, and shall include:
190 ([a]i) the file number of the complaint;
191 ([b]ii) the names of the parties;
192 ([c]iii) a statement of the relief that the respondent seeks; and
193 ([d]iv) if not requesting a hearing, a statement of the reasons that the relief
194 requested should be granted.

195 [E]([1]5)(a) As soon as reasonably practicable after receiving an answer, or
196 no more than 30 days after receipt of an answer at the USOE, the Executive
197 Secretary shall schedule a hearing, if requested, as provided in Rule R277-202.

198 ([2]b) If the parties can reach an agreement prior to the hearing consistent
199 with the terms of UPPAC's initial recommendation, the prosecutor may negotiate a
200 stipulated agreement with the respondent.

201 ([3]c) A stipulated agreement described in Subsection [R277-201-5E(2)](5)(b)
202 shall be submitted to the Board for the Board's final approval.

203 [F]([1]6)(a) [~~Default:~~] If a respondent does not respond to the complaint within
204 30 days, the Executive Secretary may initiate default proceedings in accordance with
205 the procedures set forth in Section R277-201-7.

206 ([2]b) Except as provided in Subsection R277-201-7[G](3), if the Executive
207 Secretary enters an order of default, the Executive Secretary shall make a
208 recommendation to the Board for a revocation or a suspension of the educator's
209 license for five years before the educator may request a reinstatement hearing.

210 ([3]c) If a default results in a suspension, a default may include conditions
211 that an educator shall satisfy before the educator may qualify for a reinstatement
212 hearing.

213 ([4]d) An order of default shall result in a recommendation to the Board for a
214 revocation if the alleged misconduct is conduct identified in Subsection
215 53A-6-501(5)(b).

216 **R277-201-6. Stipulated Agreements.**

217 [A-](1) At any time after UPPAC has made an initial recommendation, a
218 respondent may accept UPPAC's initial recommendation, rather than request a
219 hearing, by entering into a stipulated agreement.

[B-](2) By entering into a stipulated agreement, a respondent waives the respondent's right to a hearing to contest the recommended disposition, contingent on final approval by the Board[;].

[C-](3) ~~[Elements of a stipulated agreement:]~~At a minimum, a stipulated agreement shall include:

([1]a) a summary of the facts, the allegations, and the evidence relied upon by UPPAC in its recommendation;

([2]b) a statement that the respondent admits the facts recited in the stipulated agreement as true for purposes of the Board administrative action;

([3]c) a statement that the respondent:

([a]i) waives the respondent's right to a hearing to contest the allegations that gave rise to the investigation; and

([b]ii) agrees to limitations on the respondent's license or surrenders the respondent's license rather than contest the allegations;

([4]d) a statement that the respondent agrees to the terms of the stipulated agreement and other provisions applicable to the case, such as remediation, counseling, restitution, rehabilitation, and other conditions, if any, under which the respondent may request a reinstatement hearing or a removal of the letter of reprimand or termination of probation;

([5]e) if for suspension or revocation of a license, a statement that the respondent:

([a]i) may not seek or provide professional services in a public school in ~~Utah~~the state;

([b]ii) may not seek to obtain or use an educator license in ~~Utah~~the state; or

([e]iii) may not work or volunteer in a public K-12 setting in any capacity without express authorization from the UPPAC Executive Secretary, unless or until the respondent:

([i]A) first obtains a valid educator license or authorization from the Board to obtain such a license; or

([i]B) satisfies other provisions provided in the stipulated agreement;

([6]f) a statement that the action and the stipulated agreement shall be

252 reported to other states through the NASDTEC Educator Information Clearinghouse
253 and any attempt to present to any other state a valid Utah license shall result in
254 further licensing action in Utah;

255 ~~([7]g)~~ a statement that respondent waives the respondent's right to contest
256 the facts stated in the stipulated agreement at a subsequent reinstatement hearing,
257 if any;

258 ~~([8]h)~~ a statement that all records related to the stipulated agreement shall
259 remain permanently in the UPPAC case file; and

260 ~~([9]i)~~ a statement reflecting the stipulated agreement's classification under
261 ~~[GRAMA]~~ Title 63G, Chapter 2, Government Records Access and Management Act.

262 ~~[D-](4)~~ A violation of the terms of a stipulated agreement may result in
263 additional disciplinary action and may affect the reinstatement process.

264 ~~[E]([1]5)(a)~~ A stipulated agreement shall be forwarded to the Board for
265 approval prior to execution by the respondent.

266 (b) Prior to consideration of a stipulated agreement, UPPAC shall:

267 (i) make the UPPAC case file available to the Board for confidential review;
268 and

269 (ii) make other evidence available for review as directed by the Board.

270 (c) There is a presumption that the Board shall approve a stipulated
271 agreement if the Board finds that:

272 (i) a stipulated agreement is based on adequate evidence; and

273 (ii) the terms of a stipulated agreement present a reasonable resolution of the
274 case.

275 (d) The Board may take other action as provided in this rule if it finds that:

276 (i) a stipulated agreement is based on insufficient evidence;

277 (ii) the terms of a stipulated agreement present an unreasonable resolution
278 of the case; or

279 (iii) exceptional circumstances exist which warrant an alternative resolution.

280 ~~([2]e)(i)~~ If the Board ~~[fails to approve the stipulated agreement;]~~ finds that a
281 stipulated agreement is based on insufficient evidence, the Board may reject a
282 stipulated agreement and direct UPPAC to hold a hearing.

283 (ii) [t] The Executive Secretary shall notify the parties of the decision and the

proceedings shall continue from the point under these procedures at which the stipulated agreement was negotiated, as if the stipulated agreement had not been submitted.

~~[(3)f] [Alternatively, i]]~~ If the Board ~~[rejects the stipulated agreement]~~ finds that the terms of a stipulated agreement present an unreasonable resolution of a case, it may, by motion, provide alternative terms to the Executive Secretary, ~~[which]~~ that would be satisfactory to the Board.

~~[(4)g]~~ If accepted by the respondent, the stipulated agreement, as modified, ~~[would become]~~ is a final Board administrative action without further Board consideration.

~~[(5)h]~~ If the terms approved by the Board are rejected by the respondent, the proceedings shall continue from the point under these procedures at which the agreement was negotiated, as if the stipulated agreement had not been submitted.

~~[(6)i]~~ If the Board approves a stipulated agreement, the approval is a final Board administrative action, effective upon signature by all parties, and the Executive Secretary shall:

~~[(a)]~~ (i) notify the parties of the decision;

(ii) update CACTUS to reflect the action;

(iii) report the action to the NASDTEC Educator Information Clearinghouse if the agreement results in:

(A) a revocation; or

(b) a suspension; and

~~[(b)]~~ (iv) direct the appropriate penalties to begin.

~~[F:]~~ (6) If, after negotiating a stipulated agreement, a respondent fails to sign or respond to a proffered stipulated agreement within 30 days after the stipulated agreement is mailed, the Executive Secretary shall direct the prosecutor to prepare findings in default consistent with Section R277-201-7.

R277-201-7. Default Procedures.

~~[A:]~~ (1) If a respondent does not respond to a complaint or execute a negotiated stipulated agreement within 30 days from the date the complaint or stipulated agreement is served, the Executive Secretary may issue an order of

315 default against the respondent consistent with the following:

316 ([4]a) the prosecutor shall prepare and serve on the respondent an order of

317 default including:

318 ([a]i) a statement of the grounds for default; and

319 ([b]ii) a recommended disposition if the respondent fails to file a response to

320 a complaint or respond to a proffered stipulated agreement;

321 ([2]b) ten~~[-(10)]~~ days following service of the order of default, the prosecutor

322 shall attempt to contact respondent by telephone or electronically;

323 ([3]c) UPPAC shall maintain documentation of attempts toward written,

324 telephonic, or electronic contact;

325 ([4]d) the respondent has 20 days following service of the order of default to

326 respond to UPPAC; and

327 ([5]e) if UPPAC receives a response from respondent to a default order

328 before the end of the 20 day default period, UPPAC shall allow respondent a final

329 ~~140~~ten day period to respond to a complaint or stipulated agreement.

330 [B-](2) Except as provided in Subsection ~~[R277-201-7C]~~(3), if an order of

331 default is issued, the Executive Secretary may make a recommendation to the Board

332 for revocation or for a suspension of the educator's license for no less than five

333 years.

334 [C-](3) If an order of default is issued, the Executive Secretary shall make a

335 recommendation to the Board for a revocation of the educator's license if the alleged

336 misconduct is conduct identified in Subsection 53A-6-501(5)(b).

337 **R277-201-8. Disciplinary Letters and Dismissal.**

338 (1) If UPPAC recommends issuance of a disciplinary letter or dismissal, the

339 Executive Secretary shall forward the case to the Board for review.

340 (2) Prior to Board consideration of a disciplinary letter or dismissal, UPPAC

341 shall:

342 (a) make the UPPAC case file available to the Board for confidential review;

343 and

344 (b) make other evidence available for review as directed by the Board.

345 (3) There is a presumption that the Board shall approve a UPPAC disciplinary

letter or dismissal recommendation if the Board finds that:

(a) the UPPAC recommendation is based on adequate evidence; and

(b) the UPPAC recommendation constitutes a reasonable resolution of the case.

(4) If the Board finds that the UPPAC recommendation is based on insufficient evidence or presents an unreasonable resolution of the case or exceptional circumstances exist that warrant an alternative resolution, then the Board may:

(a) remand the case to UPPAC for a hearing;

(b) remand the case to UPPAC with recommendations for negotiation of a stipulated agreement;

(c) direct the Executive Secretary to issue a different level of disciplinary letter; or

(d) dismiss the matter.

(5) If the Board approves a disciplinary letter, the Executive Secretary shall:

(a) prepare the disciplinary letter and mail it to the educator;

(b) place a copy of the disciplinary letter in the UPPAC case file; and

(c) update CACTUS to reflect that the investigation is closed.

KEY: teacher licensing, conduct, hearings

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